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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 99-68
Inter-Carrier Compensation	)	
for ISP-Bound Traffic	)	

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REPLY COMMENTS OF COX COMMUNICATIONS, INC.

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No. of Copies rec'd 0+4
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April 27, 1999

SUMMARY

The Commission has a clear choice in this proceeding between the ILECs, which hope to upset the ESP exemption, and virtually all other parties, which support policies that will encourage economically efficient investment by CLECs and the continuing growth of the Internet. To ensure that local competition and the Internet will thrive, the Commission should adopt Cox's proposal to use existing transport and termination rates as the backup to carrier negotiations to determine compensation for termination of Internet-bound traffic.

The ILEC proposals would eviscerate the ESP exemption. By treating traffic routed to ISPs differently from traffic routed to other local exchange customers, the ILECs would reduce the revenues available to any LEC serving an ISP and, consequently, would force increases in the charges to ISPs. This would stifle the growth of the Internet and of local telephone competition. Further, these ILEC proposals are based on invalid economic and financial assumptions. Any supposed abuses that might be addressed by the ILEC proposals are far better addressed through traditional complaint procedures.

Cox's proposal is consistent with the ESP exemption, allows LECs to recover the costs of serving ISPs and is administratively efficient. Because transport and termination costs the same whether a call is routed to an ISP or to a more traditional customer, the Cox proposal is economically sound. The Cox proposal also eliminates administrative burdens by relying on existing cost determinations, and by eliminating any incentive to engage in disputes about whether traffic is "local" or "Internet" traffic. Finally, the Cox proposal will prevent ILECs from abusing their negotiating leverage, a concern that is as significant today as it was when the Commission adopted the *Local Competition Order*.

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To: The Commission

REPLY COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc. ("Cox"), by its attorneys, hereby submits its reply comments in response to the Notice of Proposed Rulemaking in the above-referenced proceeding.[1] As shown below, the Commission should rebuff the incumbent local exchange carrier ("ILEC") efforts to eviscerate the enhanced service provider ("ESP") exemption and to stifle the development of facilities-based telephony competition. Rather, the Commission should adopt Cox's proposal to have federal rules that mirror carriers' reciprocal compensation rates when intercarrier negotiations for compensation for Internet-bound traffic fail.

I. Introduction

The comments reveal a stark contrast between the views of ILECs and of their competitors on the treatment of Internet-bound traffic. The ILECs urge the adoption of a variety of measures that would effectively end the ESP exemption, even going so far as to

1/ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic, *Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68,* FCC 99-38, CC Docket No. 96-98, CC Docket No. 99-68 (rel. Feb. 26, 1999) (the *"Notice"*). As Cox explained in its comments and *ex parte* filings prior to the *Notice,* it continues to believe that local calls to Internet service providers ("ISPs") are subject to reciprocal compensation under Section 251(b) of the Communications Act. 47 U.S.C. § 251(b).

suggest that local exchange carriers ("LECs") should be permitted to charge Internet service providers ("ISPs") for the ILEC customers' origination of Internet-bound calls. The effect of adopting any of the ILEC proposals would be to segregate ISPs into a new class of customers, subject to much higher charges than other local exchange customers.

The comments of competitive LECs ("CLECs"), by contrast, demonstrate that there is no difference in the cost of terminating local traffic and Internet-bound traffic, which means that reciprocal compensation rates also are appropriate for termination of Internet-bound traffic. These comments also show that the migration of ISPs to CLECs results not from imagined "abuses" or "distorted incentives," but from the technical superiority and other positive attributes of the services that CLECs offer.

The ILECs have created a non-problem that they urge the Commission to solve by the adoption of rules that are anticompetitive and that disadvantage ISPs as a class of customers. In contrast, Cox's proposal that the Commission should adopt federal rules to mirror reciprocal compensation rates, if intercarrier negotiations fail, will avoid the significant administrative and jurisdictional uncertainties that would result from other approaches.

II. The Commission Should Reject ILEC Proposals That Would Eliminate Any Compensation Obligation.

In response to the *Notice's* open-ended questions on appropriate compensation for Internet-bound traffic, ILECs make a wide range of proposals. These proposals include a "moratorium" on payments for Internet-bound traffic,[2/] division of revenue between ILECs

2/ GTE Comments at 19-20.

and CLECs[3/] and allowing LECs to impose access charges on ISPs.[4/] The most salient characteristic of all of these proposals is that, if adopted, the ILECs would be able to avoid making any payments to CLECs for termination of Internet-bound traffic. The ILECs justify these proposals with a hodgepodge of claims about costs and economic incentives that are entirely contrary to the facts. In fact, these proposals are ill-disguised efforts to, at a minimum, evade the ESP exemption. The Commission should not countenance these anticompetitive efforts. It should reject the ILEC arguments out of hand.

A. The ILEC Proposals Would Eviscerate the ESP Exemption.

The ESP exemption from the access charge regime is a fundamental element of the Commission's efforts to avoid anticompetitive and inflationary regulatory impacts on the Internet and on other enhanced services. It has been affirmed repeatedly, most recently in 1997.[5/] Under the ESP exemption, enhanced service providers are exempted from paying interexchange carrier access charges. Local exchange carriers are not, however, prohibited from recovering the costs of serving ISPs and other enhanced service providers. Rather,

3/ BellSouth Comments at 9.

4/ SBC Comments at 22-23.

5/ *See* Access Charge Reform, *First Report and Order*, 12 FCC Rcd 15982, 16134 (1997) (retaining exemption to "preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services"), *aff'd sub nom. Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998).

carriers recover these costs of serving ESPs in the same way they recover the same costs of serving other local telephone customers.[6]

The ESP exemption does not, as some ILECs suggest, require recovery of costs solely from local exchange charges. An ILEC or CLEC that serves an enhanced service provider recovers its costs from all the revenue sources applicable to service provided to that customer. Thus, ISPs pay normal business rates, plus subscriber line charges and presubscribed interexchange carrier charges, both of which are components of the access charge regime. Of course, charges to the customer are not the only way that a carrier recovers its costs of serving that customer. It also can collect charges for vertical services and intercarrier charges, such as terminating access for calls from outside the local calling area and compensation for transport and termination of local calls to that customer. All of these sources of revenue, taken together, recover the costs of serving any local customer, including an ISP.

Each of the ILEC proposals would upset this balance. GTE's proposed "moratorium" would deprive carriers serving ISPs of revenues associated with their costs for transport and termination of traffic. The division of revenue proposal not only would eliminate revenues for terminating traffic, but would require the terminating carrier to share its remaining revenues with the originating carrier. Similarly, the SBC proposal would deprive the terminating carrier of any revenues for the termination services it provides, *and* would allow the originating carrier to impose new costs on the ISP.

6/ *See* Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, *Order*, 3 FCC Rcd. 2631, 2637 n.53.

Each of these proposals would have the effect of eliminating the ESP exemption as to ISPs. The SBC proposal would do so directly, by allowing ILECs to impose what amount to access charges on ISPs, and other ILEC proposals would force carriers to change the way they charge ISPs for service. This inevitably would increase the costs of serving ISPs. As every party to this proceeding acknowledges, there are real costs associated with the transport and termination of any traffic, including traffic to Internet service providers.[7/] If as various ILECs suggest, terminating LECs cannot be compensated for these costs in the same way they are compensated for the costs of serving other local exchange customers, the costs will be shifted to ISPs. The Commission has a more than adequate record before it to demonstrate that these costs, in the aggregate, are in the hundreds of millions or billions of dollars. Any Commission attempt to prevent such shifts of this substantial cost would result in LECs seeking to avoid serving ISPs. Such an unintended consequence would be contrary to the Commission's stated goal of encouraging the growth of the Internet.[8/]

The certain effects of the ILEC proposals demonstrate that there is only one way to preserve the ESP exemption in this proceeding. That is, the Commission should require originating carriers to compensate terminating carriers for their costs of terminating calls to ISPs. Moreover, as shown below, the only rational basis for setting that compensation rate is negotiation, with the existing local reciprocal compensation rate as a backstop.

7/ Indeed, as demonstrated in Cox's comments and described below, the costs of terminating Internet-bound traffic and local traffic are the same. Cox Comments at 7; *see infra* Part III.

8/ *Notice*, ¶ 6 ("[w]e emphasize the strong federal interest in ensuring that regulation does nothing to impede the growth of the Internet").

B. ILEC Claims About Costs and Economic Incentives Are Not Credible.

Ignoring the actual behavior of ISPs and their customers, the ILECs attempt to bolster their proposals with arguments about the supposed economic incentives of CLECs and, in one case, an analysis of the costs of serving as an originating carrier. History suggests that the Commission should not rely on either economic predictions or cost calculations proffered by ILECs in this case any more than it did when considering the cost of transport and termination in the *Local Competition* proceeding.[9/]

In essence, the ILEC economic incentive argument is that payment of compensation for terminating Internet-bound traffic will create distorted incentives for CLECs to serve ISPs to the exclusion of all other customers.[10/] There are several flaws in this argument.

First, it makes sense only if terminating compensation exceeds the costs of providing termination by more than a normal profit. This is possible only if (1) reciprocal compensation rates (all of which are based on ILEC cost studies) are excessive; or (2) CLECs are more efficient providers of call termination than ILECs. If the rates are too high, this is entirely at the ILEC's behest, and should be remedied in the next round of negotiations and arbitrations.

9/ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499, 16001, 16007 (1996) (the "*Local Competition Order*") (describing and rejecting incumbent LEC proposals to use access rates as ceiling for transport and termination charges).

10/ *See, e.g.*, SBC Comments at 20.

If, on the other hand, the CLEC is a more efficient provider of call termination than the ILEC, then it is entirely appropriate for the CLEC to benefit from its pro-competitive efficiencies.[11/]

Second, the ILEC argument depends on the assumption that CLECs will choose to serve only ISPs, to the exclusion of all other customers. Some ILECs even go so far as to say that CLECs will attempt to avoid serving heavy Internet users.[12/] There is not a scintilla of evidence for these assumptions. The vast majority of CLECs, including Cox, serve a wide variety of customers, including residential customers, ISPs and other businesses. Moreover, federal and state law prohibit discrimination against potential customers and there is no way to tell what a line will be used for when the customer purchases it. Consequently, this ILEC allegation is absurd.

ILEC predictions that CLECs will choose to serve only ISPs are of a piece with most of their other predictions regarding local telephone competition. The Commission should recall that, for instance, the ILECs vociferously argued in the *Local Competition* proceeding that bill and keep, not payment of reciprocal compensation, would lead to distorted economic incentives.[13/] They also argued that there was no need to adopt benchmarks and proxies because they would have incentives to negotiate fairly, a claim that was shown to be false even

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11/ In this context, the ILEC claim is similar to a claim that CLECs, such as Cox, that provide local exchange service more efficiently than ILECs, should not be able to earn higher profits than the ILECs do.

12/ Bell Atlantic Comments at 3-4.

13/ *See, e.g,* Bell Atlantic Reply Comments, CC Docket 96-98 (May 30, 1996), at 21 (arguing that high reciprocal compensation rates would be self-correcting because CLECs would "sign up customers whose calls are predominately inbound such as credit card authorization centers and internet access providers").

before the Commission adopted its local competition rules. Simply put, the ILECs' predictions regarding economic incentives and market effects have always been entirely self-interested and should be disregarded.

Third, a CLEC that depends on revenues from terminating traffic to ISPs is not likely to remain in business for very long. As the Commission has recognized in its *Advanced Services* proceeding, broadband Internet access is becoming available across the country from a variety of vendors, including cable operators, DSL ILECs, data CLECs and wireless providers.[14/] None of these access methods would result in terminating compensation payments to a CLEC; several of them do not even make use of the public switched telephone network. Moreover, the users most likely to migrate to these access methods are heavy users, which means that shifts to broadband Internet service will have a disproportionate effect on terminating minutes. In this evolving environment, a CLEC that does not account for such changes will not survive, let alone prosper.[15/]

The ILECs also fail to account for the real reason that CLECs attract ISP business: CLECs provide better service. As the comments of Verio and Global NAPs demonstrate,

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14/ *See* Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, *Report*, CC Docket No. 98-146 (rel. Feb. 2, 1999) (the "*Advanced Services Report*"), ¶¶ 34-44.

15/ Some ILECs suggest that CLECs will choose not to deploy broadband services, such as DSL services, so as to preserve revenues from terminating Internet-bound calls. *See, e.g.*, SBC Comments at 22. In light of the commitments of ILECs and data CLECs to deploy DSL services, and of cable operators to deploy cable modem services, such a strategy makes no business sense whatsoever. More likely, the CLEC would discover that its revenues would decline rapidly as high volume customers migrate to ISPs that provide broadband service.

CLECs offer high quality telecommunications services and customer service that surpass those of ILECs.[16/] This, of course, is precisely what Congress hoped for when it adopted the Telecommunications Act of 1996: the development of competition that provides customers with high-quality, lower-cost services. The Commission should be wary of self-interested claims that the provision of services that benefit end users, including ISPs, are economically inefficient.

Finally, the Commission should discount ILEC claims regarding their costs of originating Internet-bound calls. Only one carrier, Ameritech, even attempts to document its costs, and the Ameritech showing is obviously inadequate. Ameritech adds a markup to its TELRIC cost calculations, which already should include an overhead component under the Commission's rules.[17/] The Ameritech calculation also suggests that it loses money on *every* second line sold in Illinois, regardless of the amount of traffic the line carries, which obviously cannot be the case.[18/] In addition, by isolating hypothetical lines used only for

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16/ Verio Comments at 2 ("in Colorado, Verio has found that CLEC local services are provided to Verio more promptly than ILEC services"); Global NAPs Comments at 3 ("CLECs actually like doing business with ISPs and treat them as valued customers. ILECs for the most part do business with ISPs only grudgingly").

17/ Ameritech's justification for the markup is that it accounts for advertising and marketing costs. Such costs are not relevant in this calculation because they are nonrecurring costs associated with obtaining the customer, and are entirely voluntary. At the same time, Ameritech bases the markup on the discount for resold services, so applying the markup to TELRIC costs results in an apples and oranges comparison because the resale discount does not use TELRIC.

18/ The monthly fixed costs per line in the Ameritech study, before accounting for usage-related costs, exceed the revenues by $4.77. *See* Ameritech Comments, Attachment A at 10. Considering Ameritech's most recent profit report, which indicates that increased profits resulted in significant part from growth in access lines, it is evident that this calculation

Internet access (without making any effort to show how many lines actually are used that way and are not, for instance, also used for incoming faxes), Ameritech fails to account for the significant number of lines it serves that carry few or no outgoing calls or that carry more incoming than outgoing calls. In other words, in a business where costs and revenues are averaged, any carrier can isolate some lines for which costs exceed revenues.[19] The relevant question always has been whether overall costs exceed overall revenues, not whether some lines have higher costs than others. Ameritech's cost analysis utterly fails to address this issue.

III. The Cox Proposal Best Addresses the Economic, Administrative and Jurisdictional Issues Raised by the Notice.

As shown above, the ILEC proposals are based on unsound theories about CLEC economic incentives and effectively would end the ESP exemption for ISPs. Cox, however, has proposed an approach that is consistent with the ESP exemption, that allows CLECs and ILECs alike to recover all their costs of serving ISPs, and that avoids the administrative and jurisdictional snares that affect other proposals. The Commission should adopt the Cox approach.

As described in Cox's initial comments, the Commission should adopt a two-step mechanism as its compensation framework for Internet-bound traffic. First, carriers should be

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either fails to account for some revenues or overstates Ameritech's costs. *Ameritech Earnings Grow 19.5 Percent in First Quarter* (visited Apr. 27, 1999) <http://www.ameritech.com/media/release/view/0,1038,2656|1_1,00.html>.

19/ Second lines used by teenagers could have cost characteristics similar to second lines used for Internet service.

encouraged to negotiate, but for a limited period of time. If, however, negotiation does not succeed, compensation will be determined pursuant to Commission rule by reference to the rates that apply to transport and termination for those carriers.[20/] Thus, the states will not determine compensation for termination of Internet traffic, but the rates will be set by reference to existing state rates.

This approach is consistent with the Commission's past practice, most notably in adopting the ESP exemption, and with the practices of many states that use interstate access rates as proxies for state access rate determinations.[21/] It also relies on the expertise of the states in determining carrier-specific costs, thus avoiding a duplicative and unnecessary administrative burden on the Commission.

The Cox proposal ensures that all carriers will receive cost-based compensation for transport and termination of Internet-bound traffic. As Cox and several other commenters demonstrated, the costs and functionalities of terminating Internet-bound traffic are the same as the costs of terminating local traffic subject to reciprocal compensation.[22/] The record in this

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20/ The transport and termination rates could have been determined through negotiation, through arbitration, or through other state-supervised processes.

21/ The Commission has relied on proxies to regulate other rates in a variety of contexts, including the *Local Competition Order* and in the context of charges for operator services, in which the Commission used AT&T's rates as a reference ceiling. *Local Competition Order*, 11 FCC Rcd at 16909; Policies and Rules Concerning Operator Service Providers, 6 FCC Rcd 2314, 2316 (Com. Car. Bur. 1998) (requiring reports based on typical calls handled by AT&T).

22/ *See, e.g.,* Cox Comments at 7; Global NAPs Comments, Affidavit of Lee L. Selwyn at 4-7; AT&T Comments at 10-11.

proceeding is definitive on this point. Thus, reciprocal compensation rates are the best possible rates to use to compensate carriers for terminating Internet-bound traffic.

The Cox proposal also avoids significant concerns raised by both the proposals in the *Notice* and the proposals made by other parties in this proceeding. Most notably, because the Cox proposal does not require the states to make any determinations regarding compensation for Internet-bound traffic, the difficult question of whether the Commission has the power to delegate such determinations to the states can be avoided and additional litigation on this issue by ILECs to delay payment to CLECs can be forestalled.[23/]

The Cox proposal also will eliminate substantial administrative burdens that would arise if the Commission were to adopt different compensation regimes for local traffic and ISP-bound traffic. The comments of other parties show that it is likely that disputes will arise over whether traffic is bound for the Internet or not. For instance, Ameritech argues that "the Commission should require all LECs to use reasonable diligence to identify their ISP customers and to exclude ISP traffic . . . from their reciprocal compensation bills."[24/] This proposal raises the likelihood of disagreements not only about which traffic is Internet-bound traffic, but also about whether CLECs have been diligent enough in seeking out their ISP customers. Because, as Ameritech acknowledges, there is no good way for any carrier to be

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23/ *See, e.g.*, SBC Comments at 6-7 (arguing that states cannot arbitrate interstate rates); Ameritech Comments at 15-20 (FCC cannot require use of Section 251 process for Internet-bound traffic).

24/ Ameritech Comments at 20.

certain about whether traffic is being routed to the Internet, any disputes are likely to be lengthy and contentious.[25/]

In addition, the likelihood of such disputes is directly proportional to the difference between compensation for Internet-bound traffic and the compensation for local traffic. If the two rates are identical, there is no financial impact from failing to identify traffic appropriately. If, however, the rates are different, each party will want to characterize traffic in the most financially advantageous way, an incentive that will grow as the rate disparity increases. In other words, the ILEC proposals, and any proposal that establishes different rates for local traffic and Internet-bound traffic, will increase the incentives for regulatory arbitrage, regardless of the economically efficient outcome.

The problems of adopting differing compensation regimes for local traffic and Internet-bound traffic are compounded by the difficulty of separating "interstate" and "intrastate" Internet traffic. As several parties have demonstrated, under the Commission's framework there is no practical way to determine whether an individual Internet-bound call will be interstate, intrastate or mixed, so it would be pointless even to try. The Cox proposal avoids this concern because all Internet-bound traffic would be subject to the same compensation as local traffic.

Finally, the Cox proposal prevents ILECs from abusing their substantial negotiating leverage. The ILEC comments make clear that they intend to use their leverage in any

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25/ *Id.* (difficulty of identifying Internet-bound traffic); *see* Cox Comments at 9 (likelihood of disputes regarding nature of CLEC-terminated traffic).

negotiations regarding compensation for termination of Internet-bound traffic.[26] Moreover, the experience of the last three years shows that there is little, if any real negotiation between ILECs and CLECs. In fact, the very language governing what traffic is covered by reciprocal compensation was drafted by the ILECs and incorporated without change into almost every interconnection agreement.

This should not come as a surprise to anyone. As Cox and others predicted and as the Commission acknowledged in the *Local Competition* proceeding, the ILECs have little or no incentive to negotiate and, consequently, will insist on dictating terms whenever possible.[27] The ILECs also have negotiating leverage because there will be few, if any, consequences for them if negotiations fail and potentially significant liabilities if negotiations succeed.[28] Thus, in the absence of a predictable and reasonable backstop, in the form of a specific pricing mechanism to compensate carriers for transport and termination of Internet-bound calls, the ILECs will continue to stall and will attempt to evade their responsibilities for as long as possible.

26/ Bell Atlantic goes so far as to propose that, in the event that carriers cannot reach an agreement, "local carriers that provide Internet access with another carrier should simply retain the payments they receive from their own customer." Bell Atlantic Comments at 6. This, of course, is the "compensation" mechanism Bell Atlantic has preferred from the start.

27/ Cox Comments at 4-6; *see also* CompTel Comments at 10-11 (ILECs rarely negotiate); MCI WorldCom Comments at 5-6.

28/ Cox Comments at 4-6.

IV. The Commission Should Not Base Its General Rules Governing Compensation for Internet-Bound Traffic on ILEC Allegations of Abuses.

One of the principal arguments of the ILECs in this proceeding is that the Commission should act to stop supposed "abuses" of reciprocal compensation by CLECs. While the ILECs claim such abuses are widespread, they provide no credible evidence for their claims and, in fact, there are ample remedies for any actual abuses that might occur. The Commission should not, therefore, give any weight to the ILEC claims of abuse when considering what rules to adopt in this proceeding.

Initially, it is apparent that the ILECs have an extremely broad concept of what might constitute an "abuse." Based on the comments, it appears that the ILECs believe that almost any CLEC service offering can be abusive, if the service is profitable.[29/] That, of course, is not the case. It also is not the case that serving ISPs is, *per se,* an abuse, even if they constitute a significant proportion of a CLEC's customers. Indeed, as shown above, ISPs may have significant reasons to prefer CLECs as their carriers, especially if ILECs are not responsive to CLEC needs.

29/ Over time, the ILEC concept of abusive behavior has changed. In the Commission's *Local Competition Proceeding,* the ILECs argued that relatively high reciprocal compensation charges were necessary to prevent CLECs from using high cost facilities and from disproportionately serving customers who made many outgoing calls. *See Local Competition Order*, 11 FCC Rcd at 16031 & n.2663. As several commenters pointed out, the ILECs claimed that they would not impose excessive reciprocal compensation charges because CLECs would then choose to serve customers who are net recipients of calls. *See* AT&T Comments at 15, *citing* Bell Atlantic Reply Comments, CC Docket 96-98 (May 30, 1996) at 21. Since that time (and particularly in this proceeding), the ILECs have argued that CLECs that serve customers who are net recipients of calls are engaging in abusive behavior.

The ILEC claims about abuses, in any event, are not well supported. Bell Atlantic cites unspecified "information from Internet newsgroups" for its claim that some CLECs are making payments to ISPs based on the amounts of incoming traffic.[30] The reliability of such reports, especially when Bell Atlantic does not even reveal the name of the newsgroup, is highly suspect. In the absence of any better information, the Commission should not assume that any abuse (however defined) is occurring, let alone that it is common.

In addition, to the extent there are CLECs that target ISPs (or, for that matter, other customers with high incoming call volumes), there is no evidence that this will be a successful business plan in the long term. Among other things, a business plan that depends on high levels of terminating compensation is vulnerable to reductions in the per minute charges, which could come through renegotiation or arbitration, to ILEC efforts to target similar customers and to migration to broadband alternatives.

Finally, to the extent that there are abuses, the Commission and state regulators have ample powers to address them. Both the Commission and state regulators have rules against discrimination and state CLEC certification rules should be sufficient to govern any "sham" CLECs. If any ILEC has evidence that a CLEC is engaging in abusive behavior, a complaint should be filed with the appropriate regulator, seeking whatever relief is appropriate. In the meantime, the Commission should not throw out the baby with the bath water and adopt rules that penalize CLECs in general.

30/ Bell Atlantic Comments at 3 n.3.

V. The Commission Should Rebuff Efforts to Import Cable Modem Issues into This Proceeding.

The Florida Public Service Commission and GTE both suggest that the Commission should address issues relating to so-called "open access" to high speed data services provided over cable facilities.[31/] The Commission should not inject these irrelevant issues in this proceeding. Indeed, the Commission already has considered whether it should address access to cable modem services in the *Advanced Services* proceeding and concluded that there was no reason to do so at this time.[32/] Given that only a few weeks have elapsed since the report was issued, there is no basis for revisiting that conclusion.

VI. Conclusion

The factual record and the Commission's continuing commitment to the ESP exemption both compel the same result in this proceeding. The Commission should ensure, regardless of the jurisdictional nature of Internet-bound traffic, that terminating carriers are compensated for the costs of transporting and terminating that traffic. The single best mechanism for doing so is to allow negotiation between carriers, while recognizing that a secure backstop is necessary to prevent ILECs from sabotaging the negotiating process. The backstop must be to adopt the same rates for Internet-bound traffic as for local traffic, because the costs are the same. This approach will create a compensation system that is economically rational, administratively

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31/ Florida Public Service Comments at 4-5; GTE Comments at 20 n.48.

32/ *Advanced Services Report,* ¶ 101.

efficient and consistent with the Commission's goal of encouraging the ongoing growth of the Internet.

For all these reasons, the Commission should adopt rules in accordance with the proposals contained herein.

Respectfully submitted,

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April 27, 1999

CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, a secretary at Dow, Lohnes & Albertson, PLLC, do hereby certify that on this 27th day of April, 1999, a copy of the foregoing "Reply Comments of Cox Communications, Inc." was sent by first-class mail, postage prepaid, to the following:

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